



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201143030

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

AUG 04 2011

Uniform Issue List: 408.03-00

SE: T: EP: RA: TJ

Legend:

Taxpayer A

IRA A

Company A

Company B

Account A

Account B

Amount 1

Amount 2

Amount 3

Dear :

This letter is in response to a request for a letter ruling dated July 5, 2010, as modified and supplemented by additional correspondence dated April 12, 2011, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 70, asserts that her failure to accomplish the rollover of Amount 1 to an eligible retirement account within the 60-day period prescribed by section 408(d)(3) was due to erroneous instructions given to her by Company B which resulted in depositing Amount 1 into non-IRA accounts. Taxpayer A further represents that Amount 1 has not been used for any purpose.

Taxpayer A, maintained IRA A, an individual retirement account under section 408(a) of the Code, with Company A. On May 29, 2009, Company A issued a distribution check for Amount 1 to Taxpayer A. Taxpayer A's financial advisor advised her to put the distribution in a retirement account within the 60-day rollover period. Taxpayer A went to Company B and explained that she wanted to move funds from IRA A to a more stable account. She told Company B that it is her intention to rollover the money within the 60-day requirement to another retirement account so that she would not have to pay taxes on the funds at that time. Based on Company B's instructions, Taxpayer A placed Amount 2 into Account A and Amount 3 into Account B. However, Accounts A and B were not eligible retirement accounts.

Taxpayer A discovered that Accounts A and B were not an eligible retirement accounts when she went to her tax preparer to file her 2009 tax return.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such

receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was due to her reliance on the erroneous instructions provided by Company B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA A. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 into a rollover IRA or other eligible retirement plan. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact  
SE:T:EP:RA:T1, ( ), at

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

**Enclosures:**

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